

**TESTIMONY OF DOUGLAS LOWENSTEIN, PRESIDENT
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BEFORE THE SENATE COMMITTEE ON COMMERCE
SEPTEMBER 13, 2000**

Good morning, and thank you for inviting me to testify today on the Federal Trade Commission's report on entertainment industry marketing practices. I am testifying today on behalf of the Interactive Digital Software Association¹, the trade body representing U.S. video and computer game software companies. Our members publish games for use in the home. In 1999, the industry generated \$6.1 billion in retail software sales. IDSA's 32 members account for 90% of the edutainment and entertainment software sold in the US.

We believe the issues raised by the FTC, and its recommendations, deserve serious and open-minded discussion, both here in Congress and within our own industry.

To that end, I would like to divide my testimony into three sections: first, a discussion offering some critical and important background about our industry, our markets, and our products; second, a review of self-regulatory initiatives we have taken over the years to ensure the responsible labeling and marketing of video and computer games to consumers; and third, comments on the FTC's findings and recommendations.

INDUSTRY BACKGROUND

Majority of Game Players are Adults, not Kids

First, let me address two of the great myths about the video game industry, to wit: 1) video games are played predominantly by teenage boys and 2) most video games are rated Mature and have significant levels of violence. Both are wrong.

In fact, the primary audience for video games is NOT adolescent boys. According to research by Peter D. Hart Research Associates earlier this year, the average age of computer and video game players is 28 years old, and 61 percent of all game players are age 18 and over. A remarkable 35% of game players are over 35 years old, and 13% are over 50; 43% of the 145 million Americans who play computer and video games are women. IDSA's own consumer research reveals that 70% of the most frequent users of computer games and 57% of the most frequent users of video games are also over 18.

Unlike other entertainment products, most newly released video games cost anywhere from \$40-60. Thus, it's not surprising, when you add this to the fact that a

¹ IDSA's members publish software only for the home. The arcade game business is a different sector with its own representatives.

majority of consumers are adults, that IDSA research finds that nine out of every ten video games are actually purchased by someone over 18. Furthermore, 84% of the kids who do buy games say they have the permission of their parents to do so. Similarly, in a survey completed by Peter Hart last fall, 83% of parents said they “try to watch or play at least once every game that their child plays to determine whether it is appropriate.”

Notably, the FTC’s own survey confirms these findings. “It is clear that most parents are able to play a watchdog role when they choose to do so.... According to parents’ responses, even more parents (83%) are involved in the actual purchase transaction; 38% report that they usually purchase or rent the games, and another 45% of parents do so together with the child.”

So any discussion of how our industry markets its products take into account the fact that a majority of those who buy and use our products are adults, not kids, so parents are still almost certainly going to be involved in the actual purchase. As the FTC said,

“This level of parental involvement, either at the point of selection or purchase, means that most parents have the opportunity to review rating information or to check the product packaging to determine whether they approve of the game’s content.”

This does not mean our industry does not have an obligation to market products responsibly and to label them accurately. But it does mean that parents are the first, last, and best line of defense against products that are not appropriate for their children.

70% Of Games Appropriate for Everyone; only 9% Are Rated Mature

With the demographics of the industry changing rapidly, so too has the type and mix of products published by game companies. Contrary to popular perceptions, most games do not contain significant levels of violence. In fact, the video game rating system the industry voluntarily set up six years ago, and which Sen. Joe Lieberman has repeatedly praised, has rated over 7,500 titles of which only 9% carry a Mature rating. Seventy percent are rated for Everyone over six. In 1999, only 100 out of 1,500 titles released were Mature games, and these represented just 5% of total sales.

Not only are most games appropriate for everyone, but also most of the best sellers are not violent. For example, in the last six months, the top selling games have been Pokemon, Who Wants to be a Millionaire, SimCity 3000, and racing and skateboarding games. So far in 2000, only two of the top selling PC and video games are rated M, and 16 are rated Everyone. What this reflects is the fact that video games are now mass market entertainment and the range and diversity of

products has widened, resulting in a substantial market for casual games like puzzle, board, and card games, and hunting and fishing titles, in addition to staples like racing, football, and action games.

In short, this industry has seen its sales double since 1995. The bulk of that growth has been fueled by consumers over the age of 18 and by games whose content has broad appeal.

COMMITMENT TO EFFECTIVE SELF-REGULATION

The video and PC game industry has been committed to effective self-regulation since the formation of the IDSA in 1994. We have consistently and continuously sought to respond to concerns about the small number of our products that contain significant violence, balancing our absolute commitment to creative freedom with our commitment to empowering consumers to make informed choices. We are guided by our belief that the ultimate responsibility for controlling the games that come into the home lies with parents -- not industry, not Congress, and not federal or state governments. According to the FTC, 45% of parents who are aware of the video game rating system say they do not use it. I submit to you that no one has yet conceived of a law that can mandate sound parenting.

Initiatives on Game Ratings

In 1995, the IDSA created the Entertainment Software Rating Board, or ESRB, which uses teams of independent, demographically diverse raters to review each and every video game. ESRB issues ratings suggesting – and that is a key word “suggesting” but not dictating – the age appropriateness of a title. In addition, ESRB ratings provide simple but clear information about the content that influenced the rating, such as animated violence, strong language, or suggestive themes. The philosophy underpinning the ESRB system is to give parents the tools to make informed choices, but not to attempt to dictate to them what is right for their families. At the same time the ESRB was created, IDSA voluntarily created an Advertising Code of Conduct requiring that the ratings and content information issued by ESRB be placed on packaging and in advertising. The Ad Code also contained a provision advising that “companies must not specifically target advertising for entertainment software products rated for Teen, Mature, or Adults Only to consumers for whom the product is not rated as appropriate.”

Starting in 1995, the ESRB maintained an active program to provide information on the ESRB to retailers and consumers. It established a toll free number which has logged millions of calls since its inception, created a multilingual web site where consumers can get information on the age and content rating of over 6,000 video games, and distributed millions of Parent Guides to ESRB Ratings to retailers and advocacy throughout the country, as well as to the Attorney General of Illinois.

In 1997, recognizing the emergence of the Internet, the ESRB launched a new rating service called ESRB Interactive, or ESRBi. Through this service, ESRB offers companies the opportunity to rate their websites and video games distributed on line. More and more companies are now rating online games and game websites with ESRBi.

In May 1999, in the weeks after the Columbine tragedy, I appeared before a hearing of this Committee chaired by Sen. Sam Brownback, and made a series of new commitments in response to renewed concerns about entertainment violence. Specifically, IDSA said:

1. it would launch a stepped up campaign to educate consumers about the rating system;
2. we would reach out more aggressively to retailers to encourage them to both increase the amount of rating information available in stores and enforce the ESRB ratings; and
3. we would to examine industry advertising practices and explore ways we could address concerns in this area, both as to the content of ads and the targeting of these ads.

We have redeemed every commitment made that day.

Consumer and Retailer Education and Enforcement

Last fall, ESRB launched an extraordinary campaign to raise awareness and use of its ratings, with the centerpiece being a PSA featuring Tiger Woods urging parents to “Check the Rating” of games they buy. ESRB purchased advertising in major national publications with significant parent readership, such as Good Housekeeping, Parenting, and Newsweek. ESRB placed pull-out flyers in major parent-oriented publications, such as Child Magazine. It redesigned its consumer brochures and distributed millions to leading retailer; and it reached out to leading national grassroots organizations with ties to schools and parents, such as Mothers Against Violence in America and the PTA seeking ways to partner with them to get the word out to consumers, especially parents, about ESRB ratings and how to use them.

Furthermore, the IDSA sent letters to major national retailers asking them to make a commitment to consumers to use their best efforts not to sell Mature rated games to persons under 17, a step we had also taken in October 1998. As you know, Toys ‘R’ Us was the first retailer to adopt this policy and in the last week K-Mart, Wal-Mart, and Target have done so as well. IDSA supports those efforts. We believe other retailers will soon follow suit.

In addition to all these steps, the IDSA Board this past July renewed its commitment to another paid media campaign this holiday season to promote the ESRB, and

offered to fund 50 percent of the cost of producing in-store educational materials on the ESRB for use by retailers.

Yet another voluntary self-regulatory step came as a result of discussions that began at the White House Summit on Violence. The IDSA and ESRB completed an agreement with AOL in which AOL adopted the ESRB ratings as the standard for games on its service. ESRB and AOL have also formed a Task Force to promote the ESRB ratings with other leading Internet sites.

Initiatives on Advertising and Marketing

In September 1999, the IDSA Board took the extraordinary and far reaching step of asking the ESRB to create a new Advertising Review Council (ARC) within the ESRB. The ARC is empowered both to ensure that all advertisements by those who use ESRB ratings adhere to strict content standards covering such areas as violence, sex, and language, and to enforce compliance with all other provisions of the industry ad code, including the anti-targeting provision. In addition, the IDSA shifted responsibility for the ad code and its enforcement from the association to the new ESRB ad council, and provided a major increase in resources to support expanded staffing and more aggressive monitoring and enforcement of advertising standards. This initiative was undertaken long before the FTC report was completed, and reflected our own judgment that our industry needed to revamp and step up our approach to monitoring and enforcing our advertising standards. The ARC unit began operations February 1 -- coincidentally the cutoff date by the FTC's of its monitoring effort -- and one of its first successes was convincing virtually every top game enthusiast magazine -- the primary advertising vehicle for our industry -- to adopt the ARC principles and guidelines as their own. In addition, Ziff-Davis, IDG, and Imagine, the three top publishers of game magazines, sit on the ARC Board of Directors. Since February, ARC has been meeting extensively with IDSA members to educate them on the ad code and ensure compliance.

THE FTC REPORT

We appreciate the fact that the FTC described our industry's overall self-regulatory program as "the most comprehensive of the three industry systems studied by the Commission" and that it recognized that "it is widely used by industry members and has been revised repeatedly to address new challenges, developments, and concerns regarding the practices of our members." The FTC also pointed out that quite the opposite of standing by idly, we have been aggressive in seeking compliance with our standards. As it put it, "to its credit, the IDSA has taken several steps to encourage industry members to comply with" the industry's various ratings and advertising requirements. Also perhaps lost in the hubbub over the report is the recognition by the FTC that the independent rating system used by the video game industry "appears to be helpful to those parents who actually use it" and that a

majority of these parents say it does an excellent or good job in advising them on the levels of violence in our products.

In this regard, Peter Hart completed a new survey this past July seeking to gauge whether consumers themselves believe that ESRB ratings are accurate. The research involved mall-intercept interviews with 410 adults nationwide, including 246 parents who were shown videotapes of game clips and asked to rate them based on the ESRB standards. The survey found that “in 84% of all instances, games are rated equal to or less strictly than the official ESRB rating.” Hart found that the ESRB is “twice as likely to be more conservative than the public” in rating decisions. With respect to the content descriptors, the survey found “participants are generally in agreement with the ESRB on violence descriptors, and in instances in which there is disagreement, they are usually less strict than the ratings board.” In short, the ESRB ratings are reliable and effective.

It is clear, though, that the FTC uncovered individual marketing plans that indicate that some of our members, in violation of long standing industry guidelines, planned to market, and may have marketed, games rated for Mature users to young people. Let me make it clear to this Committee that the IDSA does not condone or excuse the marketing of Mature rated products to persons under 17 and, indeed, we condemn it. As I noted, six years ago and long before the recent outcry over media violence, we ourselves voluntarily created an advertising code of conduct, which contained an anti-targeting provision.

But it also must be pointed out that we have some legitimate business disagreements with the FTC’s analysis of industry practices and the impression the report conveys of our industry’s markets and marketing. Thus, let me take a moment to address several facts ignored by the FTC.

According to statistics collected by the ESRB’s new Advertising Review Council, since February 1, 2000, the 16 leading game enthusiast magazines, noted by the FTC as the primary vehicles for industry marketing, ran a total of 1,830 ads for games. Of these, only 188, or about 10%, were for Mature rated product. The most M rated ads in a single issue was 7, and typically, each issue contains only 3 or 4 ads for Mature rated products. This relative paucity of ads for M rated product reflects the fact, as I pointed out earlier, that M rated games are actually a small portion of the overall game market both in total releases and retail sales. The question of whether those ads should or should not appear in these publications is a fair point of discussion, but let’s all understand that any suggestion that companies are flooding consumers with ads for Mature rated product is simply not accurate.

One of our major quarrels with the FTC report is the apparent assumption that magazines with what it calls “a majority under-17 readership” are not appropriate outlets for advertising of Mature rated games, and that websites or TV shows that are “popular” with kids are similarly inappropriate outlets for advertising Mature

product. We agree that placing an ad for a Mature rated product in a publication that is clearly and squarely aimed at young readers, such as Nickelodeon or SI for Kids, is a violation of our standards. But we reject the FTC's operating assumption that ads in publications that happen to have some noteworthy percentage of young readers, but a substantial and perhaps even dominant share of older readers and users, is inappropriate. We do not think it is unreasonable for a company to place an ad for a game in GamePro magazine where the average age of the readers is 18. We do not feel it is inappropriate to place an M ad in Electronic Gaming Monthly where, according to the magazine, 59% of its readers are 17 and over. The FTC, by the way, in some apparent zeal to make its point, says its standard for review for game magazines are those with a majority of subscribers age 17 or under. The problem with this, of course, is that an M rated game is appropriate for persons 17 and older so the FTC should have used an under 17 cutoff. It's hard to know how this skews its data but it is clear that in the case of EGM, it makes a dramatic difference.

In the same vein, FTC's use of a "popularity" test to rule out other advertising outlets is restrictive and commercially impractical. "Popularity" is not much of a bright line standard. Using this guidepost, virtually every game website and sites like mtv.com would be off limits to advertisers of Mature products even though a majority of viewers may be in the appropriately targeted demographic group. This is unreasonably restrictive.

It's easy to lose sight of the fact, in all the rhetoric and political posturing, that video games are entertainment products for people of all ages, that they are constitutionally protected products, and that at best, the scientific evidence linking them to harmful effects is weak and ambiguous at best, and at worst does not exist. Indeed, that's exactly what The Government of Australia concluded last December after an exhaustive evaluation of all the available research on violent video games.

The Australian Government report concluded: "After examining several attempts to find effects of aggressive content in either experimental studies or field studies, at best only weak and ambiguous evidence has emerged. Importantly, these studies have employed current games or concerned contemporary young players who presumably have access to the latest games. The accumulating evidence – provided largely by researchers keen to demonstrate the games' undesirable effects – does indicate that it is very hard to find such effects and that they are unlikely to be substantial."

I know this Committee will hear testimony from some medical groups announcing that the debate is closed, but these groups make the unscientific leap of treating video games as parallel entertainment to TV and films even as they acknowledge that there is little research to support the claim that video games are harmful. As Jeff McIntyre, Senior Legislative Assistant for the American Psychological Association said in the Baltimore Sun on June 26, 2000, "Interactive media are so

new, scientists are uncertain how they affect young people...We are not sure about it, we are real involved in getting research funded to get some ideas about that.... The social community is really struggling with these issues.”

THE FTC RECOMMENDATIONS

While we do have some issues with the FTC findings, we are mostly in accord with its recommendations. In fact, in virtually every instance, IDSA has already implemented these recommendations, in some cases as many as six years ago. This does not mean our job is done. We will carefully review all of the recommendations, and will meet with the FTC, representatives of our industry, and advertising outlets to explore whether there are reasonable and practical ways to enhance the efficacy of our self-regulatory system.

With respect to the specific recommendations and our position, the FTC recommends that:

1. *Industries establish or expand codes to prohibit target marketing to children and impose sanctions for violations.* **IDSA Response:** The FTC notes that the IDSA has “crafted a code to address this issue.” We did that six years ago. But in addition, a year ago, we recognized that our industry needed to take more proactive steps to address concerns about marketing as our industry grew and became more sophisticated. To that end, as I have mentioned, we created a new Advertising Review Council, or ARC, in the ESRB, increased both the funding and personnel dedicated to monitoring and enforcing industry ad guidelines. For the first time ever, ARC drafted and is implementing guidelines governing the content of game ads in such areas as violence, sex, and language. ARC took the additional step of linking compliance with the ad code to securing a rating. Thus, any company that gets an ESRB rating is legally obligated to comply with the ad guide and failure to do so could trigger a range of sanctions including revocation of the rating (which would force the product off the shelf) to legal action for trademark infringements to referring violators to the FTC or other appropriate agencies.
2. *The FTC called for increased compliance with ratings at the retail level.* **IDSA Position:** We have urged retailers for several years to take steps to uphold ESRB ratings at the point of sale. Last fall, we asked retailers to sign a Commitment to Consumers pledging to use their good faith efforts to restrict the sale of M rated products to persons under 17. We are pleased that in recent weeks K-Mart, Wal-Mart, and Target have all joined Toys 'R Us in adopting restrictive sales policies and believe other retailers will follow suit in some manner.

3. *FTC called on industries to Include the reasons for the rating in advertising and product packaging and continue efforts to educate parents.* **IDSA Position:** When ESRB created the video game rating system it included from the start information on both age appropriateness and content that influenced a rating. From the inception of the ESRB, companies have been required to put a content descriptor box on the back of packaging showing any content flagged by the ESRB as noteworthy. In addition, a year ago, the industry amended its ad code to require that the content descriptors be included in all print advertising. On the promotion front, we have been quite aggressive. The highlight was a PSA filmed for the industry by Tiger Woods last fall that was offered for play to every major TV network and every local TV station in the nation's top markets. In addition, ESRB took out paid ads in magazines such as Good Housekeeping, Parenting, and Newsweek to educate parents about the ESRB ratings. Most recently, our Board reaffirmed its commitment to a new paid media campaign this Fall, as well as offering to fund fifty percent of the cost of producing educational pieces for use by retailers in their stores.

CONCLUSION

Mr. Chairman, I will not tell you our industry has been perfect either in its conduct or its implementation of our own standards. I will tell you we have shown a genuine commitment to the principle of informing consumers about the content of our products and regulating how these products are marketed. We have proven that with or without the FTC, with or without the heat of a presidential campaign, our efforts to continue to enhance our self-regulatory regime are unwavering.

At the same time, we must acknowledge that we do live in a world where media is incredibly complex, where the Internet spans the globe, where consumers, young and old, have access to information in ways never before imagined. In this environment, it is simply not possible or realistic to create an air-tight system where young people do not hear about, or even obtain, games that are not appropriate for them. To the extent this occurs due to industry's unambiguous effort to target kids to buy M rated products, it is not defensible. But to the extent it happens as a result of the information and media explosion flooding over all of us, it is unfair and unrealistic to point fingers.

Where does this leave us? About where the FTC said when it commented on parents' awareness of the rating system. "It is clear that most parents are able to play a watchdog role when they choose to do so.... [The] level of parental involvement, either at the point of selection or purchase, means that most parents have the opportunity to review rating information or to check the product packaging to determine whether they approve of the game's content."

In the final analysis, we all must work cooperatively to ensure that parents know about and make use of the rating systems. In a world where nearly half say they do not even pay attention to the efforts our industry already makes, it seems to me that is a goal we all can work towards.

Thank you.